



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Torkelson Associates, Inc.
File: B-230173
Date: February 25, 1988

DIGEST

Since the basis for setting a procurement aside for small businesses is the reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices, a protest based on the fact that the only large business capable of manufacturing the item will be excluded from participation does not provide a legal basis for disturbing the procurement.

DECISION

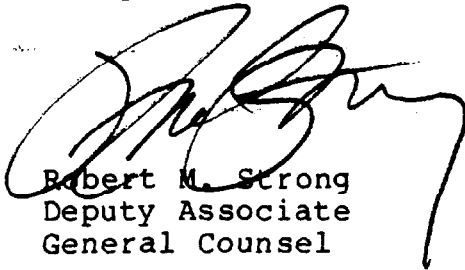
Torkelson Associates, Inc., protests the Navy's decision to set aside request for proposals No. N00164-88-R-0048 for exclusive small businesses participation. Torkelson alleges that the set-aside prejudices the one large company that manufactures the equipment the Navy seeks. Additionally, Torkelson alleges that the size of this procurement would cause excessive hardship for a small business in the event of a default.

The basis of a total small business set-aside is the reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices. Advanced Construction, Inc., B-218554, May 22, 1985, 85-1 CPD ¶ 587. Torkelson has neither alleged nor shown that the Navy was unreasonable in believing that offers would be obtained from at least two responsible small business concerns or that the Navy's award will be made at a reasonable price. The fact that one or more large business will be excluded from a procurement that is set aside for small business does not provide a legal basis for disturbing the procurement.

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Moreover, Torkelson's concern with the impact of a default on a small business, is a matter that concerns the responsibility of a proposed awardee. A contract can only be awarded to a responsible prospective contractor, and thus if a firm is found to be responsible, it is presumed to have the capability of performing the contract, Federal Acquisition Regulation § 9.104, and our Office does not review affirmative determinations of responsibility, except in circumstances not applicable here. 4 C.F.R. § 21.3(m)(5) (1988). In other words, a contract cannot be awarded if the contracting officer anticipates a default.

The protest is dismissed. 4 C.F.R. § 21.3(m).



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